

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY C. MOORE

Appeal No. 2000-0506
Application 08/979,592

ON BRIEF

Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 4, 6, 8 through 15 and 18. Subsequent to the final rejection, appellant filed an amendment (Paper No. 8, July 8, 1999) canceling claim 4 and making minor amendments to claims 1 and 13. This amendment was entered by the examiner (see Paper No. 9, July 22, 1999).

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In the examiner's answer (Paper No. 11, page 7), the examiner has withdrawn the rejection of claim 11, indicating that this claim is now objected to, but would be allowable if rewritten in independent form. Claims 4, 5, 7, 16 and 17 have been canceled. In accordance with the foregoing, we note that only claims 1 through 3, 6, 8 through 10, 12 through 15 and 18 remain for our consideration on appeal.

Appellant's invention relates to an apparatus (Figure 1) for holding a piece of paper or poster board in a substantially vertical plane and to a method of positioning a piece of paper on a substantially vertical surface using such an apparatus (claim 18). Claims 1 and 18 are representative of the claimed subject matter on appeal, and a copy of those claims, as they appear in the Appendix to appellant's brief, is attached to this decision.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

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Von Herrmann ('954) ¹	3,168,954	Feb. 9,
1965		
Von Herrmann ('013)	3,591,013	Jul.
6, 1971		
Drain	4,693,443	Sep. 15,
1987		
Cauffman et al. (Cauffman)	5,048,782	Sep. 17,
1991		

Claims 1 through 3, 6, 8 through 10, 12 through 15 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Von Herrmann ('013) in view of Cauffman.

Claims 1 through 3, 6, 8 through 10, 12 through 15 and 18 also stand rejected under 35 U.S.C. § 103 as being unpatentable over Drain in view of Von Herrmann ('954) and Cauffman.

Reference is made to the answer (Paper No. 11, mailed

¹ While this reference has not been listed by the examiner on page 3 of the examiner's answer as being part of the prior art relied upon in a rejection of the claims under appeal, we observe that it is readily apparent from the statement of rejection on pages 6 and 7 of the answer that the examiner is in fact relying on Von Herrmann (3,168,954) in a rejection of the claims on appeal. Thus, we have listed this reference as being relied upon.

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September 14, 1999) for the examiner's reasoning in support of the above-noted rejections, and to appellant's brief (Paper No. 10, filed August 6, 1999) for the arguments thereagainst.

OPINION

Having carefully reviewed and evaluated the obviousness issues raised in this appeal in light of the record before us, we have come to the conclusion, for the reasons which follow, that

the examiner's rejections of the appealed claims under 35 U.S.C. § 103 will not be sustained.

Considering first the rejection of the claims on appeal based on Von Herrmann ('013) and Cauffman, we observe that Von Herrmann ('013) discloses an apparatus (Figure 1) for holding a piece of paper or poster board (16) in a substantially vertical plane, which apparatus is generally like that claimed by appellant. More specifically, the housing or hanger (1) of

Von Herrmann ('013) includes a front wall (2) having an upper end connected to the top wall (4) and a lower end (at 10) that is generally C-shaped and is angled toward the back wall (3) to form a chamber or recess (5) to loosely hold a rod means (6). In contrast to appellant's claimed apparatus, the hanger of Von Herrmann ('013) includes a pad (8) having pressure-sensitive adhesive on both sides thereof for securing the hanger to a supporting wall (7), instead of a sliding type mechanical "attachment means" as set forth in the claims on appeal. Recognizing this deficiency in Von Herrmann ('013), the examiner has turned to the teachings of the map rail (16) and hook arrangement (10) in Cauffman, urging that it would have been obvious to one of ordinary skill in the art at the time appellant's invention was made "to have modified Von Hermann [sic] to have substituted the attachment means and wall mount as taught by Cauffman for the purpose of facilitating removal and attachment of the housing to a surface" (answer, page 5).

Even if we assume that the Cauffman patent is analogous

art, we must agree with appellant's position that the prior art teachings relied upon by the examiner would not appear to be sufficient to have suggested to one of ordinary skill in the art making the type of modifications in the hanger (1) of Von Herrmann ('013) urged by the examiner. In the first place, the problem of supporting a map mounted on a spring roller as in Cauffman is not at all related to the simple hanger member for sheet material taught in Von Herrmann ('013). Those two devices operate in entirely different fashions and involve vastly different forces acting on the respective supporting and attachment means therein. Moreover, we observe that the map rail hooks (10) in Cauffman are separate and distinct components from both the map rail (16) and the channel member (20) of the map and roller assembly therein, and that substituting the supporting arrangement of Cauffman for the adhesive pad in Von Herrmann

('013) would not appear to result in a structure like that claimed by appellant.

In appellant's apparatus, the housing itself defines an "attachment means" that extends from the back wall of the housing, wherein the attachment means includes first and second ears (42, 44) extending from the back wall (20) of the housing and away from the longitudinal axis of the housing and which are spaced apart from one another to form a longitudinally extending slot that extends along the length of the housing. In this regard, we point to page 5, lines 5-6, of appellant's specification wherein it is noted that "[t]he housing 14 including the attachment means 46 are of unitary construction and can be formed from an extrusion mold." No such unitary housing structure and attachment means is taught or suggested by Cauffman, or by the collective teachings of Von Herrmann ('013) and Cauffman considered together. Note particularly, appellant's arguments found on pages 12-14 of the brief.

As for the examiner's rejection of claims 1 through 3, 6, 8 through 10, 12 through 15 and 18 under 35 U.S.C. § 103 as being unpatentable over Drain in view of Von Herrmann ('954)

and Cauffman, this combination of the prior art suffers from the same deficiencies as that discussed above, in that, if the attachment means and wall mount (10, 16) of Cauffman were to be "substituted" for the mounting means seen in Drain, Figure 4, as the examiner has urged on page 7 of the answer, the resulting housing structure would not be the unitary housing and attachment means disclosed and claimed by appellant or an equivalent thereof.

It likewise follows that the "providing" step of appellant's method claim 18 would not be met by the examiner's proposed combinations of the applied prior art references and that the combination of Von Herrmann ('013) and Cauffman, or Drain in view of Von Herrmann ('954) and Cauffman, would not "inherently disclose" appellant's claimed method, as has been urged by the examiner (answer, page 5).

In the final analysis, it is clear to us from our evaluation of the applied prior art references that the examiner has failed to provide an adequate evidential basis to

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support the § 103 rejections before us on appeal, and that the examiner has relied upon impermissible hindsight knowledge derived from appellant's own teachings in attempting to reconstruct the claimed subject matter out of isolated teachings in the prior art. Accordingly, we will not sustain the examiner's rejection of claims 1 through 3, 6, 8 through 10, 12 through 15 and 18 under 35 U.S.C. § 103 as being unpatentable over Von Herrmann ('013) in view of Cauffman, or that of claims 1 through 3, 6, 8 through 10, 12 through 15 and 18 under 35 U.S.C. § 103 as being unpatentable over Drain in view of Von Herrmann ('954) and Cauffman.

The decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
JOHN P. McQUADE)	

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Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
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APPENDIX

1. An apparatus comprising:

a housing having a longitudinal axis, a front wall, a back wall, a top wall, a top portion and a bottom portion,

wherein the front wall has an upper end connected to the top wall and lower end that is generally C-shaped and is angled toward the back wall to form a chamber to loosely hold a rod means, said housing further defines an opening between said lower end and said back wall; and

wherein said housing further defines an attachment means that extends from the back wall so that the apparatus can be attached to a surface, and wherein said attachment means comprises at least one first ear and at least one second ear extending from the back wall away from the longitudinal axis of the housing wherein the at least one first ear and the at least one second ear are in a spaced apart relationship to each other across the back wall to form a longitudinal extending slot that is in a plane parallel with the longitudinal axis of the housing, and wherein the device further includes;

a longitudinally elongated wall mount for receiving the attachment means, said wall mount forming a generally

u-shaped track having a back wall, a top side wall and a bottom side wall extending from the back wall, wherein said top sidewall forms a first lip and said bottom side wall forms a second lip, said first lip and second lip being sized to be slidably received by the attachment means.

18. A method for positioning a piece of paper on a substantially vertical surface, said method comprising:

providing a housing having a longitudinal axis, a front wall, a back wall, a top wall, a top portion and a bottom portion, wherein the front wall has an upper end connected to the top wall and a lower end that is generally C-shaped and is angled toward the back wall to form a chamber to loosely hold a rod means, said housing further defines an opening between said lower end and said back wall, and said housing defines an attachment means that extends from the back wall so that the apparatus can be attached to a surface;

mounting a rod means in said housing;

sliding a piece of paper between the rod means and the back wall of the housing, so that the rod means moves to a first position;

pulling the piece of paper from between the rod means and the back wall of the housing so that the rod means moves to a second position allowing the piece of paper to easily be removed from the housing.